AO 472 (Rev. 09/08) Detention Order Pending Trial (MODIFIED)

UNITED STATES DISTRICT COURT

for the

Eastern District of Missouri

United States of America
v.
OSCAR HENRY STEINMETZ
Defendant

Case No. 4:16 CR 163 RWS

DETENTION ORDER PENDING TRIAL

After conducting a detention hearing under the Bail Reform Act, 18 U.S.C. § 3142(f), I conclude that these facts require that the defendant be detained pending trial.

Part I—Findings of Fact

☐ (1) The defendant is charged with an offense described in 18 U.S.C. § 3142(f)(1) and has previously been convicted of ☐ a federal offense ☐ a state or local offense that would have been a federal offense if federal jurisdiction had existed - that is

- ☐ a crime of violence as defined in 18 U.S.C. § 3156(a)(4) or an offense listed in 18 U.S.C. § 2332b(g)(5) for which the prison term is 10 years or more.
- ☐ an offense for which the maximum sentence is death or life imprisonment.
- ☐ an offense for which a maximum prison term of ten years or more is prescribed in ____________ .
- ☐ a felony committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. § 3142(f)(1)(A)-(C), or comparable state or local offenses:
- ☐ any felony that is not a crime of violence but involves:
  - ☐ a minor victim
  - ☐ the possession or use of a firearm or destructive device or any other dangerous weapon
  - ☐ a failure to register under 18 U.S.C. § 2250

☐ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state release or local offense.

☐ (3) A period of less than five years has elapsed since the ☐ date of conviction ☐ the defendant's release from prison for the offense described in finding (1).

☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition will reasonably assure the safety of another person or the community. I further find that the defendant has not rebutted this presumption.

Alternative Findings (A)

☐ (1) There is probable cause to believe that the defendant has committed an offense

- ☐ for which a maximum prison term of ten years or more is prescribed in ____________ .
- ☐ under 18 U.S.C. § 924(c).

*Insert as applicable: (a) Controlled Substances Act (21 U.S.C. § 801 *et seq.*); (b) Controlled Substances Import and Export Act (21 U.S.C. § 951 *et seq.*); or (c) Section 1 of Act of Sept. 15, 1980 (21 U.S.C. § 955a).

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☒ involving a minor victim under 18 U.S.C. § 2251(a) and 2251(d) (production of child pornography).

☐ (2) The defendant has not rebutted the presumption established by finding 1 that no condition will reasonably assure the defendant's appearance and the safety of the community.

Alternative Findings (B)

☒ (1) There is a serious risk that the defendant will not appear.

☒ (2) There is a serious risk that the defendant will endanger the safety of another person or the community.

At the detention hearing, the parties had no disagreement with the facts set forth in the Pretrial Services Report dated April 21, 2016. Defendant noted that, although he was arrested on a prior felony charge, he was purportedly arranging to surrender when he was arrested. The court adopts and incorporates by reference herein the facts set out in that report. Defendant requested that he be released on bond/conditions and offered additional information and arguments, which the Court has fully considered.

Part II— Statement of the Reasons for Detention

I find that the testimony and information submitted at the detention hearing establishes by ☒ clear and convincing evidence ☒ a preponderance of the evidence that

There is no condition or combination of conditions that will reasonably assure the Court that Defendant will not be a danger to the community or a person in the community, and will appear as required.

** CONTINUED ON NEXT SHEET **

Part III—Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or a designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or held in custody pending appeal. The defendant must be afforded a reasonable opportunity to consult privately with defense counsel. On order of United States Court or on request of an attorney for the Government, the person in charge of the corrections facility must deliver the defendant to the United States marshal for a court appearance.

Date: 29 April 2016

/s/ John M. Bodenhausen

United States Magistrate Judge

*Insert as applicable: (a) Controlled Substances Act (21 U.S.C. § 801 *et seq.*); (b) Controlled Substances Import and Export Act (21 U.S.C. § 951 *et seq.*); or (c) Section 1 of Act of Sept. 15, 1980 (21 U.S.C. § 955a).

Part II – Statement of Reasons (continued)

The government's motion for detention in this case is aided by a rebuttable presumption favoring detention. Defendant is charged with a crime that involved a minor victim – production of child pornography. At the detention hearing, the Court advised Defendant that his charges triggered the rebuttable presumption that no condition or combination of conditions will reasonably assure Defendant's appearance as required and the safety of the community. In response to this presumption, a defendant must produce some evidence that there are conditions of release that will reasonably assure that he will not flee and will not pose a danger to the community. In this regard, however, the burden of proof remains with the government, and at all times Defendant retains his constitutional presumption of innocence. See United States v. Abad, 350 F.3d 793, 797 (8th Cir. 2003) ("'In a presumption case … a defendant bears a limited burden of production—not a burden of persuasion—to rebut the presumption by coming forward with evidence he does not pose a danger to the community or a risk of flight.'") (quoting United States v. Mercedes, 254 F.3d 433, 436 (2nd Cir. 2001)).

There was no dispute that a presumption applies in this case.

At the detention hearing, both parties proceeded by proffer.

Defendant proffered several facts and circumstances to indicate that he would not flee or pose a danger. The charges in this case relate to conduct that allegedly occurred more than ten years ago. Defendant became aware of the potential for related State charges approximately one year ago, and he did not flee. Although Defendant is currently on State probation for misdemeanor stealing, defense counsel does not believe that Defendant is subject to revocation because the allegations at issue in the present federal case predate the conduct at issue in the State misdemeanor case. Regarding any danger to the community, Defendant believes that any risk can be mitigated by imposing restrictive conditions upon his release.

Upon considering Defendant's reasons proffered at the detention hearing, the undersigned concludes that, although the question is close and may be subject to fair debate, Defendant has met his burden of production and rebutted the presumption of detention. Nonetheless, "the presumption favoring detention does not disappear, but remains for consideration." Abad, 350 F.3d at 797.

In this case, the government has not relied entirely on the rebuttable presumption favoring detention. Rather, at the detention hearing, the government proffered significant evidence / information indicating that Defendant posed a flight risk and a potential danger to the community. The government argued that, although the conduct at issue occurred several years ago, Defendant maintained the offending images up until the time of his arrest. The government also noted the significance of the specific conduct at issue, which involved substantial harm to the minor victim. The alleged conduct involved sexually abusive conduct by Defendant, involving a minor, which occurred over a three-year period. The recovered images depicted the victim in pornographic poses, as well as dressed in a leather/chain harness.

The government noted that the current federal charges carry a mandatory minimum term of imprisonment of not less than ten years, and a maximum term of not more than twenty years. After the detention hearing, the government filed a supplement (ECF No. 12) clarifying that, if prosecuted in the State, Defendant would likely face a charge of Statutory Sodomy in the First Degree, which would carry a five-year minimum term of imprisonment.

In addition to the information and arguments from the parties, the Pretrial Services Report establishes that Defendant is 63 years old. Defendant is currently on probation for stealing. Defendant has a prior arrest in 2014 for failure to appear on a felony.[1]

Regardless of whether Defendant rebutted the presumption of detention, and based on the facts and circumstances outlined in the Pretrial Services Report, as well as the proffered information and arguments of both parties, the undersigned finds, by a preponderance of the evidence, there is no condition or combination of conditions that would reasonably assure Defendant's appearance. The undersigned finds by clear and convincing evidence that there is no condition or combination of conditions that would reasonably assure the Court that Defendant will not be a danger to the community or a person in the community.

In making these findings, the undersigned gives great weight to the circumstances associated with the conduct at issue in the Indictment and the relationship between Defendant and the victim. Although the conduct occurred many years ago, the length of time is not as favorable to Defendant in this case as it might be in a different case. In this case, the government proffered that Defendant maintained copies of the offending images up until the time of his recent arrest in this matter. The victim has allegedly suffered significant harm as a result of the conduct at issue in this case. Defendant was recently employed as a school bus driver which involved interactions with minors. Defendant is currently unemployed.

The undersigned also gives great weight to the range of punishment at issue in this case. Although Defendant faced a significant term of imprisonment if he had been charged in the State, he faces a mandatory minimum term of imprisonment in the current action that is twice as long as the potential State action. Further, while Defendant proffered a plausible explanation for Defendant's failure to appear in connection with a prior felony charge, the fact that Defendant failed to appear when required to do so is nonetheless significant. Defendant has family contacts outside of Missouri

[1] Defense counsel proffered that Defendant was making arrangements to surrender when he was arrested for failing to appear.